IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4728 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHULA UDYOG & 5 - Applicant(s)

Versus

H M PATEL & 1 - Respondent(s)

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Appearance :

MR RR MARSHALL for Applicant(s) : 1 - 6.MRS NR MARSHALL for Applicant(s) : 1 - 6.
MR YV SHAH for Respondent(s) : 1,
MR HL JANI, APP Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 29/09/2005

ORAL JUDGMENT

1. The petitioner has filed this petition under

Section 482 of the Criminal Procedure Code praying for quashing and setting aside the Criminal Municipal Complaint No.877/1994 pending in the Court of JMFC, Gandevi.

2. It is stated in the petition that the complaint does not in any way point out as to what part each of the petitioners / accused has played in committing an offence under the Act. It is further stated that complaint is absolutely silent and makes no allegation of any specific or general nature as to what was the role or involvement of the petitioners in the commission of the offence. It is further stated that under similar circumstances, this Court has quashed and set aside a complaint on the ground that no allegations were made against the petitioners. A copy of the order passed by this Court in Misc. Criminal Application No.2010/1990 dated 30.4.1994 is annexed.

3. While looking at the said order, the Court finds that the criminal complaint is not quashed by the

Court on the contrary it was observed that in this proceeding it would not be possible to examine the question with regard to quashing the charge levelled against the petitioner. In view of this position, the petitioner in that petition has sought permission to withdraw the said petition with a view to challenge the order of framing of charge against the petitioner. It is also clarified in the said order that it was open to the petitioner to challenge the order of framing the charge against the petitioner for the offence under Section 7(1) read with Section 16 of the Prevention of Food Adulteration Act, 1954.

4. In view of the aforesaid order, the Court does not see any justification in the present petition and hence there is no question of quashing the complaint at this stage. It is, however, open for the petitioner to challenge the order regarding framing of charge.

5. Subject to the above observations, this petition

is accordingly disposed off. Rule is discharged. Interim relief granted earlier stands vacated.

kks (K. A. PUJ, J.)

FURTHER ORDER

Date: 30.9.2005

1. After the above order is dictated in the Court and before it is transcribed and signed Mr.R.R.Marshal, learned advocate appearing for the petitioner has submitted that he wants to make his submissions and the issue involved in the petition is directly covered in favour of the petitioners by the judgment of the Hon'ble Supreme Court. The Court, therefore, permitted him to make his submissions on the next date i.e., 30.9.2005. That is how the matter is heard today.

2. Mr.R.R.Marshal, has submitted that the petitioner No.1 is a partnership firm which is involved in the small scale manufacturing of Papad.

The petitioners No.2 to 5 were the partners of the said firm at the relevant time. The petitioner No.6 is the owner of the shop from which the Papads were sold and from which premises the samples were taken. Mr.Marshal, further submitted that the petitioner No.2 is the only person who was looking after the business for all practical purposes. Petitioner No.3 was living in Pennsylvania, U.S.A., for the last more than five years from the relevant date. Petitioners No.4 and 5 are the parents. He has, therefore, submitted that no role has been played in the day-today business of the firm and the complaint suffers from serious non application of mind and therefore deserves to be quashed and set aside. In support of his submissions he relied on the decision of this Court **in the case of Sulaxbhai Mukundbhai Naik vs. Food Inspector., in Misc. Criminal Application no.1187 of 1988 decided on 19.7.1988**, wherein this Court has taken a view that the proceedings against the petitioner in that petition were initiated without any averments in the complaint against them. The Court has further

observed that even assuming that the averments made in the complaint are considered to be correct, no offence was disclosed against any of the petitioners. The Court has, therefore, quashed the complaint.

3. Mr.Marshal has further submitted that in the complaint it is stated that the petitioners are guilty of not complying with the Rule 32(e) of the Rules. He has submitted that this Rule has been struck down from the Statute Book as being contrary to the Constitution. For this purpose he has relied on the decision of the Hon'ble Supreme Court **in the case of Dwarka Nath vs. Municipal Corporation of Delhi, reported in AIR 1971 SC 1844**, wherein it is held that in view of these circumstances, Rule 32 is beyond the rule making power even under Section 23(1)((d) of the Act. The appellants could not be convicted for any violation of Clause (e) of Rule 32 as the said provision, as pointed out above, is invalid. Mr.Marshal has therefore submitted that since the petitioners are

found to be guilty of breach of Rule 32(e), which Rule is struck down by the Hon'ble Supreme Court way back in 1971, the said complaint is not tenable at law. The charge levelled against the petitioners is without any application of mind and hence the complaint deserves to be quashed and set aside.

4. Mr.Y.V.Shah, learned advocate appearing for the respondent No.1 has submitted that the petitioners are absconder and the contentions which are raised before this Court can as well be raised before the learned Magistrate during the course of trial and hence the complaint cannot be quashed and set aside while exercising the extraordinary inherent powers under Section 482 of the Criminal Procedure Code.

5. Mr.H.L.Jani, learned APP has also supported the submissions made by Mr.Shah.

6. After having heard the learned advocates appearing for the respective parties and after

having gone through the relevant provisions contained in the Prevention of Food Adulteration Act, 1954, and the Rules framed thereunder and after considering the judgment of the Hon'ble Supreme Court in the case of Dwarka Nath vs. Municipal Corporation of Delhi (Supra), the Court is of the view that there is no question of recalling or reviewing the order passed on 29.9.2005 for taking any different view after hearing the learned advocates appearing for the respective parties. As far as the first submission of Mr.Marshal is concerned, the complaint discloses the offence against the accused and it is also stated as to why the petitioners No.1 to 6 are implicated as accused in the said complaint. The decision of this Court in the case of Sulaxbhai Mukundbhai Naik, vs. Food Inspector, is not applicable to the facts of the present case as in that case the Court has observed that the accused No.1 has neither given any bill nor produced any warranty nor made any statement before the opponent No.1 that he had purchased the said milk from the

petitioners No.1 and 2. In that view of the matter, the Court has taken the view that there is no iota of evidence worth the name for involving the present petitioners in the alleged commission of the offence. Here in the present case it is stated in the complaint itself that the complainant has purchased three packets of Papad from the shop of the petitioner No.6. On the said packets the name of the manufacturer was mentioned and hence the manufacturer firm as well as its partners were also joined as accused. The said packets were sent to public analyst and it was found that the said packets were mixed branded within the Section 32(2) of the Prevention of Food Adulteration Act, 1954. Even otherwise, the petition is filed immediately after the issuance of the summons and charge is yet to be framed in the matter. This Court has, therefore, already taken the view **in the case of Surat Dist. Co.operative Mils Procedures Union Ltd., vs. Kantilal Motibhai Limbachia, Food Inspector in Misc. Criminal Application No.2010/1990 decided on 30.4.1994**, wherein while

allowing the petitioners to withdraw the said petition, the Court has observed that it is open to the petitioner to challenge the order of framing the charge against the petitioner for offence under Section 7(1) read with Section 16 of the Prevention of Food Adulteration Act, 1954. The Court, therefore, does not find any substance in the said submission.

7. With regard to the second submission of Mr.Marshal that the complaint is filed on the alleged offence of Rule 32(e) of the Rules, however, the said Rule is struck down and hence the complaint is not maintainable. Here in the present case, the learned Magistrate has issued the process for an offence under Sections 2 (9)(k), 7(ii) and 16(1)(a) of the Act. In this view of the matter, the decision of the Hon'ble Supreme Court relied upon by Mr.Marshal is not applicable to the facts of the present case.

8. Since both these submissions are rejected by the

Court, there is no question of reconsideration of the decision taken on 29.9.2005 and accordingly the petition is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

kks (K. A. PUJ, J.)